



RESTRICTED — Not to be released outside the General Accounting Office except on the basis of specific approval by the Office of Congressional Relations, a record of which is kept by the Distribution Section, Publications Branch, OAS

RELEASED

B-148623

FEB 26 1973

The Honorable Henry S. Reuss
Chairman, Subcommittee on
Conservation and Natural
Resources
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

This is our response to your letter of September 12, 1972, concerning the Department of the Interior's June 29, 1972, amendment to its surface exploration, mining, and reclamation regulations. You requested that we determine (1) the basis for the Government to assume the burden of reclaiming community pits or common-use areas, (2) the amount, adequacy, and disposition of the charges collected under the regulations in effect before June 29, 1972, to defray the Government's costs of reclamation, and (3) the legality of establishing a fund for the deposit of reclamation contributions under the June 29, 1972, amendment to the regulations.

Before 1969 the Department did not require purchasers of material from community pits to pay a fee to finance the cost of reclaiming such pits. Community pits are those where a deposit of materials, such as sand and gravel, is removed by several purchasers over an extended period of time. In such cases, reclamation of the area is not performed while there is a demand for the materials in the deposit.

In January 1969 the Department issued regulations (43 CFR 23) which provided that the Government would assume the burden of reclaiming deposits where more than one permit or contract was involved. The regulations provided also that a charge to defray the cost of reclamation would be added to the sales price under each such permit or contract.

904503

089181

3.09.24

73-0115

16

22

23

18

B-148623

On June 29, 1972, the Department amended its regulations to require that a permittee or contracting party, in addition to paying the sales price, make a contribution to defray the cost of reclamation.

The matters presented in this letter were discussed with agency officials but their written comments were not obtained.

BASIS FOR GOVERNMENT TO ASSUME
BURDEN OF RECLAMATION

The Department stated that its legal authority for assuming the burden of reclamation where multiple permits and contracts are involved is its general authority to protect the public lands. The Department's Bureau of Land Management administers about 471 million acres of public land. The Department advised us that there is no way of requiring a particular purchaser to reclaim a pit used by several purchasers over an extended period of time and that the Government has the burden of reclaiming the area when a community pit is closed. The wording of the regulations, according to the Department, simply emphasizes the Government's obligation which, ideally, will be financed by those persons creating the need for reclamation.

The Department told us that a purchaser of materials on public land normally performs the reclamation, except for community pits.

We believe that the Department's position is appropriate in view of the circumstances cited concerning the use of community pits and that the Department has legal authority for its position.

CHARGES COLLECTED UNDER
JANUARY 1969 REGULATIONS

The Department informed us that, when it issued the January 1969 regulations, it intended that the reclamation charges would be deposited in a special fund of the Treasury

which would be available for reclamation expenditures. Until proper disposition of the charges could be determined, the Department issued instructions that they be deposited to Treasury account symbol 3099, "Miscellaneous recoveries and refunds, not otherwise classified."

On October 8, 1971, the Department's Assistant Solicitor issued an opinion stating that, because the charge was made a part of the sales price, the amounts received were subject to section 3 of the Materials Act, as amended (30 U.S.C. 603). Section 3 provides that money received from the disposal of materials shall be disposed of in the same manner as money received from the sale of public lands. Accordingly, a portion of the charge was paid to the State in which the charge had been collected and the remainder was deposited in general fund receipts, which are not available to the Department for expenditure.

The Department was not able to determine the exact amounts collected under the charge system when it was in effect--January 18, 1969, through June 29, 1972. The Department, however, told us that most, if not all, of the deposits made by the Bureau of Land Management to Treasury account symbol 3099, during the 3 fiscal years involved, represented the charges for reclamation. The amounts so deposited, according to the Department, were:

<u>Fiscal</u> <u>year</u>	<u>Amount</u>
1970	\$29,469
1971	70,273
1972	25,968

A total of \$965 in contributions was received between July 1, 1972, and October 31, 1972.

The Department told us that, because it was not able to determine the exact amount collected as charges, it had no way of determining whether charges were adequate to recover the cost of reclaiming community pits or common-use

areas. The Department said it would be highly improbable that the charges would cover the full reclamation costs for the following reasons.

- The amount of the charge is based on the estimated cost of reclamation at the time the pit is opened. Reclamation cannot be performed until the pit is closed, which may be several years later, and costs generally increase from year to year.
- Several pits currently in operation have had no provision in previous sales for a reclamation charge.

The Department also told us that it did not maintain a record of the pits reclaimed or the cost of the reclamation by individual pit.

ESTABLISHMENT OF RECLAMATION FUND

The Department stated that the legal basis for establishing a fund for the deposit of reclamation contributions is section 103(a) of the Public Land Administration Act (43 U.S.C. 1364(a)) which reads:

"Sec. 103(a). The Secretary of the Interior may accept contributions or donations of money, services, and property, real, personal, or mixed, for the improvement, management, use, and protection of the public lands and their resources under his jurisdiction including the acquisition of rights-of-way for such purposes. He may accept contributions for cadastral surveying performed on federally controlled or intermingled lands. Moneys received hereunder shall be covered into the Treasury and are hereby appropriated and made available until expended, as the Secretary may direct, for payment of expenses incident to the function toward the administration of which the contributions were made and for refunds to depositors of amounts contributed by them in specific instances where the contribution is in excess of their share of the cost."

The Department noted that the use of the word "contribution" did not establish a fund but rather enabled a fund to be established. The Department stated that the use of the word "contribution" sufficiently identified the reclamation fee as being separate and apart from the sales price so that it would not constitute part of the sales price.

Inasmuch as the Secretary is authorized to sell minerals obtained by surface mining operations, there is no question that he can enter into cooperative agreements with a number of persons wishing to purchase such minerals whereby the purchasers will agree to pay a certain price for the minerals plus a contribution estimated to equal their proportionate share of reclamation costs. This would seem to be clearly encompassed by the term "contribute" which is defined in "Webster's New International Dictionary," second edition, as being to "give something to a common purpose," and in "Black's Law Dictionary," third edition, as "to supply a share or proportionate part of money or property toward the prosecution of a common enterprise * * *." We see no substantial difference between the above definition and the procedure set forth in the revised regulation, where individual buyers agree to similar terms.

Furthermore, to hold that these charges for reclamation represent "contributions" under section 103(a) so that they may be used for reclamation purposes without further appropriation action would seem to be contemplated by the act in that similar funds are made available by section 301 for forest improvement and by section 302 for maintenance of roads and trails.

Accordingly, in our view, the revised regulation is consistent with and authorized by section 103(a) of the Public Land Administration Act.

- - - -

B-148623

We do not plan to distribute this report further unless you agree or you publicly announce its contents. We trust that we have answered your questions.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "James B. Stewart". The signature is fluid and cursive, with the first name "James" and last name "Stewart" clearly legible, and "B." in the middle.

Comptroller General
of the United States